IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 979 of 2007(N)

PETITIONER:

RESMI PILLAI, PROPRIETOR,
SREE PARAMESWARA FUELS,
VADAKKUMTHALA P.O.

BY ADV. SRI.M.BALAGOVINDAN
SRI.M.R.SASITH

RESPONDENTS:

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1. REVENUE DIVISIONAL OFFDICER
(SUB DIVISIONAL MAGISTRATE),
CIVIL STATION, KOLLAM.

2. TAHSILDAR/EXECUTIVE MAGISTRATE,
OFFICE OF THE TAHSILDAR, KARUNAGAPPALLI,
KOLLAM.

3. CIRCLE INSPECTOR OF POLICE,
KARUNAGAPPALLY.

4. V. SUNIL, ADVOCATE,
KUNNATH HOUSE, VADAKKUMTHALA EAST P.O.,
KARUNAGAPPALLY.

5. V. ANIL, KUNNATH HOUSE,
VADAKKUMTHALA EAST P.O.,
KARUNAGAPPALLY.

6. MOHANAN PILLAI, KOKKARIKKAL
VADAKKUMTHALA MEKKUM MURI,
KARUNAGAPPALLY.

BY ADV. SRI.P.B.SAHASRANAMAN, SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR, SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH, SRI.T.S.HARIKUMAR
R1 TO 3 BY GOVERNMENT PLEADER SRI.S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/02/2007, ALONG WITH WPC NO. 3607 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1 TRUE COPY OF DEALERSHIP ORDER ISSUED TO THE PETITIONER BY THE INDIAN OIL CORPORATION DT. 28.3.03.

EXT.P2 TRUE COPY OF PHOTOGRAPHS EVIDENCING THE OBSTRUCTION.

EXT.P3 TRUE COPY OF COMMUNICATION NO.D8/23380/06 DT.29.12.06 BY THE 2ND RESPAONDENT TO THE 3RD RESPONDENT.

EXT.P4 TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER TO THE FIRST RESPONDENT DT. 1.1.2007.

EXT.P5 TRUE COPY OF PHOTOGRAPH TAKEN ON 16.1.07.

EXT.P6 TRUE COPY OF THE BILL ISSUED BY THE PHOTOGRAPHER.

EXT.P7 TRUE COPY OF THE F.I.R. NO.968/06 BY THE SUB INSPECTOR OF POLICE, CHAVARA DT. 28.12.06.

EXT.P8 TRUE COPY OF EXTRACT OF THE PURAMBOKE REGISTER EVIDENCING THAT LAND HAVING 01-54 ARES IS IN RE-SURVEY NO. 155/3 OF VADAKKUMTHALA VILLAGE.

EXT.P9 TRUE COPY OF ORDER IN IA 948/06 IN OS 237/06 DT.22.6.06 OF MUNSIFF COURT, KARUNAGAPPALLY.

RESPONDENTS' EXTS:

EXT.R4(a) PHOTOCOPY OF THE JUDGMENT IN WP(C) 26504/05 DT.5.10.05.

EXT.R4(b) SOME PHOTOGRAPHS OF THE PETROL BUNK TAKEN ON 4.1.07.

/TRUE COPY/

R. BASANT, J.

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W.P.C.Nos. 979 & 3607 of 2007

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Dated this the 14th day of February, 2007

JUDGMENT

These writ petitions have been filed by the rival contestants and the subject matter is the same. The Tahsildar/ Executive Magistrate had passed an order dt. 29.12.2006, which is produced as Ext.P3 in W.P.C. 979 of 2007. The petitioner in W.P.C. 3607 of 2007 contends that the said order is without any merit and is not legally sustainable. The petitioner in W.P.C. No.979 of 2007 prays that there may be a direction to the officials concerned to implement the said order dt. 29.12.2006.

2. The learned Prosecutor was directed to take instructions and explain to the Court the nature and scope of Ext.P3. The learned Prosecutor, after taking instructions, submits that the respondents/ officials have no intention of putting into execution Ext.P3 order dt.29.12.2006 in as much as it cannot be reckoned as an order passed under the provisions of Chapter X B of Cr.P.C. The learned Prosecutor fairly submits that the same cannot be reckoned as a

conditional order passed under Section 133 or an injunction pending enquiry passed under Section 142 Cr.P.C.

3. The learned Prosecutor further submits that the Sub Divisional Magistrate, Kollam has now initiated M.C.No. 10 of 2007 and has passed a conditional order dt. 12.2.2007 in the matter. The conditional order is initiated on the basis of the petition submitted by the petitioner in W.P.C. 979 of 2007. The conditional order obliges the three respondents therein, which include the petitioner in W.P.C.No. 3607 of 2007, to remove obstruction under Section 133 Cr.P.C. or in the alternative to appear and show cause. The Sub Divisional Magistrate undertakes that the order dt.29.12.2006 shall not be enforced as an order passed under Section 133, 138 or 142 Cr.P.C. The parties may be directed to appear before the learned Magistrate and co-operate with the enquiry which has been initiated under Chapter X B of Cr.P.C.

3. I am satisfied that the said request can be accepted, it having been undertaken that the order dt. 29.12.2006 will not be executed and is not to be reckoned as an order passed under any provisions of Chapter X B Cr.P.C., no further directions are necessary.

4. These writ petitions are dismissed with the further direction that the parties shall abide by the orders to be passed in the proceedings initiated under Chapter X B of Cr.P.C.

(R. BASANT)
Judge

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